IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

THURSDAY, THE 29TH MARCH 2007 / 8TH CHAITHRA 1929

WP(C).No. 1463 of 2007(Y)

PETITIONER:

MR.KESAVAN, MUTHALACHERRY HOUSE,
POST KUTTOTH, (VIA) MEPPAYYUR, KOZHIKODE
DISTRICT, PRESENTLY WORKING AS VILLAGE MAN,
VILLAGE OFFICE, MEPPAYYUR, KOZHIKODE DISTRICT.

BY ADV. SRI.C.VALSALAN
SRI.K.RAKESH ROSHAN
SMT.THUSHARA.V
SRI.R.K.MURALEEDHARAN

RESPONDENTS:
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1. STATE OF KERALA, REP. BY THE SECRETARY,
DEPARTMENT OF REVENUE, SECRETARIAT,
THIRUVANANTHAPURAM.

2. THE DISTRICT COLLECTOR,
KOZHIKODE DISTRICT, CIVIL STATION,
CALICUT.

3. DEPUTY COLLECTOR (GENERAL),
CIVIL STATION, MALAPPARAMPA, CALICUT.

ADDL. RESPONDENTS:

4. A.K. KUNHANANDAN, VILLAGE MAN, AYYANCHERY VILLAGE
OFFICE, AYYANCHERY, VADAKARA TALUK

5. K.P.VENUGOPALAN, VILLAGE MAN, KASABA VILLAGE OFFICE
KOZHIKODE TALUK

6. M.M.PADMANABHAN, VILLAGE MAN, CHEVAYUR VILLAGE OFFICE
KOZHIKODE TALUK

7. P. RAVEENDRAN, VILLAGE MAN, EDACHERY VILLAGE OFFICE
VATAKARA TALUK

(IMPLEADED AS ADDL RESPONDENTS 4 TO 6 VIDE ORDER ON
I.A. 3872/2007 DT. 16.3.2007)

R1 TO 3 BY GOVERNMENT PLEADER SHRI. BIJOY CHANDRAN
ADDL.R4 TO 7 BY ADV. SHRI. R.K. MULAREEDHARAN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 29/03/2007, ALONG WITH WPC NO. 3868 OF 2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.K. DENESAN, J.

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W.P.(C)Nos.1463 & 3868 OF 2007
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Dated this the 29th March, 2007

J U D G M E N T

These writ petitions are heard together and having regard to the identical question of law and almost similar facts, for consideration, are proposed to be disposed of by this common judgment.

2. The petitioners as also the additional respondents 4 to 7 entered service in the Revenue Department as Village Man. They are working in Kozhikode District which is a unit for appointment as also the seniority of Village Man. The petitioners were appointed initially in Wayanad District in the year 1991. They requested for inter-district transfer from Wayanad to Kozhikode. Following the procedure prescribed for inter-district transfers, the requests made by the petitioners were allowed. In both the writ petitions the orders allowing inter-district transfers have been marked as Ext. P1. In W.P.(C) No. 1463/07,

Ext. P1 is dated 8-10-1996 and in W.P.(C) No. 3868/07, Ext. P1 is dated 12-8-1997.

3. The stand taken by the respondents may be stated as follows: The first proviso to Rule 27(a) of K.S. & S.S.R. mandates that the seniority of persons on mutual or inter-unit or inter-departmental transfer from one unit to another within the same department or from one department to another, as the case may be, on requests from such persons shall be determined with reference to the dates of their joining duty in the new unit or department. But for the inter-district transfer, the petitioners could have counted their seniority in the post of Village Man from the date of their effective advice by the P.S.C. to that post. Prior to the transfer the petitioners were eligible to count their seniority from 1991 onwards as Village Man in Wayanad District. But on transfer to Kozhikode District, they will have to forgo their seniority in Wayanad District and their seniority in Kozhikode District will commence from the date of their joining duty in that district which is a separate unit in the same department for the purpose of appointment and

seniority of Village Man.

4. In the year 2003 a final seniority list of Village Man in Kozhikode District was prepared and published by the District Collector, Kozhikode. Ext. P2(a) is the relevant extract of that list produced in W.P.(C) No. 1463 of 2007. The petitioner in W.P.(C) No. 1463 of 2007 has been assigned rank No. 28 and the petitioner in W.P.(C) No. 3868 of 2007 has been assigned rank No. 29 in Ext. P2(a). In column No. 4 which is meant for entering the details relating to the date of commencement of service in Kozhikode District the date shown against rank Nos. 28 and 29 is 17-7-1991. The petitioners want to justify the assigning of the above dates, whereas the respondents would contend that going by the proviso to Rule 27(a) referred to above, the correct dates ought to have been 8-10-1996 and 12-8-1997 respectively.

5. Vacancies arose in the higher category of Village Assistant in Kozhikode District and the District Collector passed orders promoting Village Men based on the seniority assigned to them in Ext. P2(a) seniority list. Promotions were effected upto Sl. No.

27. Vacancies that remained unfilled even after promoting Sl. No. 27, were sought to be filled up by Village Men who are assigned lower ranks than the petitioners. At that stage, the petitioners approached this Court complaining that their right for promotion has been overlooked by the District Collector.

6. This Court directed the District Collector to look into the grievance of the petitioner in W.P.(C) No. 1463 of 2007 and to take decision in accordance with law after affording him an opportunity of being heard.

7. Pursuant to the directions issued by this Court in Ext. P7 judgment the District Collector has passed order dated 30-12-2006 produced and marked as Ext. P8 in W.P.(C) No. 1463 of 2007 and Ext. P4 in W.P.(C) No. 3868 of 2007. These orders are under challenge in the respective writ petitions filed by the petitioners who are rank Nos. 28 and 29 respectively. The impugned orders affect both the petitioners. The reason stated for rejecting the request of the petitioners for promotion is that they are not entitled to count seniority from the date of their advice by the P.S.C.

but only from the respective dates they have joined duty in Kozhikode District.

8. Additional respondents 4 to 7 got themselves impleaded and counter affidavit has been filed by the 4th respondent on behalf of all of them. They also contend that the petitioners are not entitled to count their seniority from the date of effective advice in Wayanad District but only their joining duty in Kozhikode District as Village Man. It is stated that since the particulars pertaining to the petitioners were not correctly entered in Ext. P2(a), none included in that list could learn until further enquiries were made that the petitioners were not entitled to be assigned rank Nos. 28 and 29 with reference to the date assigned in column No. 4 in Ext. P2(a).

9. Govt. Pleader submits that the petitioners are not eligible to be promoted until all those who are entitled to be assigned seniority above the petitioners based on the date of their effective advice for appointment as Village Man in Kozhikode District or the respective dates of joining duty in Kozhikode District, as the case may be are promoted.

10. Counsel for the petitioners submits that Ext. P2(a) seniority list held the field for some time and none had raised any objection. The petitioners, therefore, have the legitimate expectation that they will be granted promotion based on the seniority thus assigned to them. The respondents are not intended to deprive the petitioners the benefit of such seniority without notice to the petitioners. If notice is served on the petitioners they expect to raise valid contentions to sustain the seniority list.

11. I have referred to the factual as well as the rule position since the petitioners have come before this Court with the grievance that their right for promotion guaranteed under Article 16 of the Constitution of India has been infringed. The right for promotion in the facts and circumstances will depend upon the seniority to be assigned to the petitioners. I find merit in the contention of the counsel for the additional respondents that they were not able to raise immediate objections against Ext. P2 (a) for want of all necessary particulars shown in that list, and more particularly, against the dates shown

therein. Counsel would submit that those having legitimate grievance and objection against the ranks assigned to the petitioners, were, in fact, misled by the publication of Ext. P2(a) list with wrong particulars.

12. There is substance in the contention of the counsel for the petitioners that whatever may be the right of the petitioners, if facts are examined with reference to the relevant rules, the petitioners shall be afforded an opportunity of being heard before seniority once assigned to them in a final list, is disturbed. It is trite that denial of the right to be heard by itself is a prejudicial act even assuming that the outcome of such hearing will not result in a different decision.

13. The 2nd respondent-District Collector shall therefore issue notice to the petitioners and the additional respondents 4 to 7 as also any other person who has filed objection against Ext. P2(a). After considering the contentions raised by the parties, decision shall be taken whether the petitioners are entitled to retain the rank assigned to them in Ext.

P2(a) list. Notice shall be issued within two weeks from the date of receipt of a copy of the judgment. Representation shall be filed by the petitioners and other party respondents within one month from the date of receipt of the notice. Personal hearing shall be afforded if request is made in that behalf.

14. The statement made in Ext. P8 that the name of the petitioners in W.P.(C) No. 1463 of 2007 shall stand removed from Ext. P2(a) suffers from an error in that, even if the petitioners are not entitled for rank Nos. 28 and 29 respectively, they shall have to be assigned ranks which are legitimately due to them in case it is ultimately found after hearing them also that they are not eligible to retain rank Nos. 28 and 29. Therefore the rank position of all the parties shall be re-determined and a revised list published in the place of Ext. P2(a) depending upon the decision directed to be taken as per this judgment. Final orders shall be passed within three weeks from the date of hearing the parties. The entire exercise shall be completed within three months from the date of receipt of a copy of the judgment. Ext. P8 order shall be

treated as provisional and the same can be affirmed or reversed depending on the final decision that may be taken after hearing all the parties, as directed above. The 3rd respondent is free to make promotions as are being done now. But those promotions shall be reviewed based on the decision, the 2nd respondent-District Collector may take with regard to the seniority of the petitioners in the post of Village Man vis-a-vis others who are parties to these cases and those who are shown as juniors in Ext. P2(a) list. If the petitioners are found entitled to retain the same rank, they will be promoted accordingly. Otherwise, they will have to wait to reach their turn according to the revised rank.

With the above directions, these writ petitions are disposed of.

K.K. DENESAN
JUDGE

jan/